

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

5-27-66
201 9417
5-13-66
503

TO : File

DATE: June 22, 1966

FROM : W. R. Peterson, Geological Engineer
Grants Section, Field Branch, PED

SUBJECT: SE 1/4 SECTION 13-13N-11W, MCKINLEY COUNTY, NEW MEXICO

PGR:WRP

A visit was made on 5-27-66 to the office of Asst. Attorney Babington on the 12th floor of the U.S. Federal Court House in Albuquerque to determine the status of the above land and also to bring our file up to date which ended on September 14, 1964 when the U.S. Attorney's motion for partial judgment was scheduled.

The Civil Case No. 5345 which was filed 5-14-63 ended in a judgment on September 28, 1965 and \$30,000 was paid by Bibb for trespass (large part was held in escrow previously) and this payment also cleared Homestake-Sapin of any liability.

The judgment provided for the following:

1. Declared Haystack Nos. 1-20 mining claims were null and void.
2. Title to the land was quieted to the U.S.
3. Upheld the withdrawal order of December 29, 1952 by the AEC in Federal Register 19, FR805.

Mr. Babington who was the Government lawyer on the case was very cooperative and stated that a letter had been sent to our council in Grand Junction (Holger Albrethsen Jr.) stating the outcome of the civil case and that the money had been paid for trespass.

I mentioned that Cibola Mining Company was interested in the property as they had found an orebody on the adjoining Section 18 which they believed extended also under Section 13. He stated it was now up to the Bureau of Land Management and the AEC as to what they wanted to do with the land.

Distribution:

Grand Junction Dossier ✓

Grants Dossier



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Form No. GJ-FD-1

VERIFICATION OF PRODUCTION RECORD
APPLICATION FOR CERTIFICATION

Application No. 2011Name of Mining Property: Haystack #1-#20Name of Applicant: Arthur Bibb

1. There (~~is~~) (is not) a record of production for the period April 9, 1948 through February 28, 1951.

Shipper	Name of Mine	District	County	State	Purch. Depot	Date	Ore Dry Tons	U ₃ O ₈ Pounds

Shipments to Shattuck Chemical Co., Denver, Colorado

Name of Shipper	Date	Pounds U ₃ O ₈

Total Pounds U₃O₈

2. There (has) (~~has not~~) been production from this property for the period March 1, 1951 through the month of January, 1960.

Production checked by Catherine MartinDate forwarded to Production Evaluation Division 4/8/60

Form No. GJ-FD-1

VERIFICATION OF PRODUCTION RECORD
APPLICATION FOR CERTIFICATION

Application No. 2011Name of Mining Property: Haystack #1-#20Name of Applicant: Arthur Bibo

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Shipments to Shattuck Chemical Co., Denver, Colorado

Name of Shipper	Date	Pounds U ₃ O ₈

Total Pounds U₃O₈

2. There (has) ~~(has not)~~ been production from this property for the period March 1, 1951 through the month of January, 1960

Production checked by Catherine MartinDate forwarded to Production Evaluation Division 4/8/60

May 19, 1961

PLD:RHT

Mr. Arthur Bibb
2718 Morrow Road N.E.
Albuquerque, New Mexico

Dear Mr. Bibb:

Enclosed is our invoice in the amount of \$44,055.29 which is due the Commission for certain uranium ores identified therein which were mined by you from the SE $\frac{1}{4}$ of Section 13, T. 13 N., R. 11 W., N.M.P.M., McKinley County, New Mexico. This amount is additional to the \$19,265.13 due the Commission for which invoice was sent with our letter of March 17, 1960 and for which payment has not been made.

You are requested to make payment to the Commission for the full amount of both invoices within thirty (30) days after your receipt of this letter.

Very truly yours,

Allan E. Jones
Manager

Enclosure:
Invoice No. 61-12

cc: Finance Division w/attachment
R.H. Toole, PLD w/ attachment

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Form AEC-399
(Form approved by Comptroller
General, U. S., Aug. 22, 1956)

No. 61-12

INVOICE FOR SERVICES AND MATERIALS

UNITED STATES ATOMIC ENERGY COMMISSION

Grand Junction Operations Office
(Office)

Grand Junction, Colorado

To: Arthur Eibo
2718 Morrow Road N.E.
Albuquerque, New Mexico

Date:

F. O. B.:

Terms:

Net 30 Days

ACCESS PERMIT NO.

LICENSE NO.

PURCHASE ORDER

QUANTITY		DESCRIPTION OF SERVICES AND MATERIALS	UNIT PRICE	AMOUNT
ORDERED	SHIPPED			
		For ore mined in trespass from Sec. 13, T13N, R11W, N.M.P.M. from the invalid mining claim known as Haystack No. 2 and delivered to Homestake-New Mexico Partners, Box 266, Grants, New Mexico		
		<u>Liquidation No.</u> <u>Dry Tons Ore</u>		
		312-1 224.9940		\$2021.50
		376 390.2905		6615.06
		386-1 204.0215		3450.48
		396 319.3515		6487.39
		403 199.0410		4926.49
		410 194.7720		3452.07
		419 275.6230		4821.31
		430 362.6050		6928.86
		439 173.7360		3245.58
		447 219.2950		4460.31
		Gross Value of Ore		\$46409.05
		Credits:		
		<u>Liquidation No.</u> <u>Haulage Allowance</u>		
		312-1 \$ 206.80		
		376 358.61		
		386-1 186.11		
		396 290.78		
		403 181.85		
		410 178.44		
		419 254.22		
		430 334.91		
		439 160.44		
		447 201.60		
		Less Total Credits \$2353.76		2353.76
		AMOUNT DUE		\$44,055.29

MAKE CHECK PAYABLE TO U. S. ATOMIC ENERGY COMMISSION AND MAIL TO ABOVE ADDRESS

16-73048-1 GPO

PED
RKL
Hv

MA:AEJ

April 28, 1960

Honorable Thomas G. Morris
House of Representatives
Washington 25, D. C.

Dear Mr. Morris:

This letter is in response to your letter of April 22, 1960, with which you enclosed a copy of H. R. 11883 a private bill you have introduced in the Congress on behalf of Mr. Arthur Bibb. You request that we withhold further action concerning our claim against Mr. Bibb pending House consideration of the legislation.

The Haystack No. 2, and certain other unpatented mining claims, were declared null and void by the Manager, Land Office, Bureau of Land Management, Santa Fe, New Mexico, on November 21, 1956, in Contest #30 (New Mexico). This decision of the Land Office Manager was affirmed by the Director, Bureau of Land Management, and was approved by the Assistant Secretary of the Interior on November 17, 1958. Copies of these decisions are attached. Mr. Bibb has not taken the matter on to the Federal courts. Thus, this determination by the Interior Department must be considered as final and effective. These mining claims are within an area withdrawn and reserved for our use by P.L.O. 964 issued by the Assistant Secretary of the Interior on May 13, 1954.

Our claim, as set forth in my letter of March 17, 1960, to Mr. Bibb, enclosing our invoice in the amount of \$19,265.13, pertained to certain ores mined by Mr. Bibb and delivered to various ore buyers during the period November 1955 - December 1959, inclusive. Of the 1,171.827 dry tons of ore covered by our invoice, 853.180 tons were mined and removed by Mr. Bibb after the final decision of the Interior Department on November 17, 1958, declaring the Haystack No. 2 null and void as mentioned above; the remaining 318.647 tons were mined and removed prior to said final decision. We have considered the mining and removal of the 853.180 tons as a willful trespass and of the 318.647 tons as an innocent trespass. The amount of our claim was

Honorable Thomas G. Morris

- 2 -

April 28, 1960

computed accordingly. However, subsequent to December 1959 Mr. Bibo mined and shipped an additional 225 tons of ore from the Haystack No. 2 to the uranium mill operated by Homestake-New Mexico Partners which ore is not covered by our March 17, 1960, invoice. Although we intend doing so, we have not yet prepared an additional invoice to Mr. Bibo covering the value of this ore because we have not received the final weights and assays from the mill. Moreover, we are advised by our field office in Grants, New Mexico, that Mr. Bibo is continuing mining activities on this land. Consequently, the amount specified in H. R. 11883 will not cover the full amount of our claim against Mr. Bibo.

My letter of March 17, 1960, also directed Mr. Bibo to cease mining operations on this land and to vacate the premises forthwith in view of the Interior Department decisions referred to above. As it appears that Mr. Bibo is continuing to mine ore from this land, notwithstanding such decisions, our future course of action concerning such mining activity has been under consideration.

However, in view of your request, we would be willing to withhold further action concerning this matter pending House consideration of your bill if Mr. Bibo ceases and desists from further mining activity on this land, vacates the premises, and advises us that he has done so.

Sincerely yours,

Allan E. Jones
Manager

Enclosures:

1. Decision, Land Office Mgr., Contest #30
2. Decision, Director, BLM, Contest #30, Approved by
Asst. Secretary of the Interior

bcc: Jesse C. Johnson, DRM, w/cy. incoming (2)
~~PED~~ w/cy. incoming
 FD w/cy. incoming
 OC w/cy. incoming

Congress of the United States
 House of Representatives
 Washington, D. C.

Manager Allan E. Jones
 Atomic Energy Commission
 Grand Junction, Colorado

Dear Mr. Jones:

I am enclosing herewith a copy of H.R. 11543, a private bill which I introduced on April 21, 1950, in behalf of Mr. Arthur E. Jones.

Since this legislation pertains to your claim filed against Mr. Jones relative to alleged mining claims, it will be appreciated if you will withhold further action pending pending consideration of the legislation.

Sincerely yours,

THOMAS O. HARRIS

Enclosure
 TCH:cs
 AB:ADL

86TH CONGRESS
2D SESSION

H. R. 11883

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1960

Mr. MORRIS of New Mexico introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

For the relief of Arthur Bibo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That Arthur Bibo of Albuquerque, New Mexico, is relieved
4 of all liability to pay all, or any part, of the sum of \$19,-
5 265.13, claimed by the United States for ore mined from
6 section 13, township 13 north, range 11 west, New Mexico
7 principal meridian, from the mining claim known as "Hay-
8 stack numbered 2. In the audit and settlement of the ac-
9 counts of any certifying or disbursing officer of the United
10 States, full credit shall be given for the amount for which
11 liability is relieved by this Act.

III

A. 5/15

RKP - RJO

PLD:RHT

April 20, 1960

Mr. Arthur Bibo
2718 Morrow Road, N. E.
Albuquerque, New Mexico

Re: DENIAL OF APPLICATION FOR CERTIFICATION NO. 2011, HAYSTACK CLAIMS
1 TO 20 INCLUSIVE

Dear Mr. Bibo:

We hereby acknowledge receipt of your application dated April 6, 1960 for certification of the Haystack Claims 1 through 20 under provisions of Domestic Uranium Program Circular 6. We have assigned Number 2011 to this application.

By letter dated March 17, 1960 Mr. Allan E. Jones, Manager of Grand Junction Operations Office, U. S. Atomic Energy Commission, gave you notice to cease mining operations and to vacate the premises covered in your application for Certification No. 2011. This action is based upon decisions of the United States Department of the Interior which we must consider as final and effective and for this reason we have determined that you do not have lawful possession of mining right in the property described in application for certification No. 2011. Therefore, your application is denied.

Domestic Uranium Program Circular 6 in 60.6(g)(iii) provides in pertinent part that:

The title or interest in the mining property should be one of ownership or lawful possession of mining rights.

Very truly yours,

R. H. Toole, Chief
Leasing & Development Branch
Production Evaluation Division

Enclosure:
Circular 6

PED

cc: Grants Branch
D. B. Hutto, FD

Toole:rc
4/20/60

Ore Reserves, POR, PED
RFCiesiel, PLD, PED

Apr. 20, 1960
Ltr to Arthur Bibb
from R. H. Toole

U. S. ATOMIC ENERGY COMMISSION

APPLICATION FOR CERTIFICATION OF MINING PROPERTY

In accordance with Atomic Energy Commission Domestic Uranium Program Circular 6
(Assistance in filling out this form will be available at the U. S. Atomic
Energy Commission's office in Grand Junction, Colo.)

Name of applicant ARTHUR BIBO Formerly P-285I
AEC License No. P-3938
Address 2718 Morrow Rd. NE., Albuquerque, New Mexico.

I hereby request that the following described mining property be certified as eligible for bonus payments under Domestic Uranium Circular 6.

1. Name of mining property Haystack Claims I to 20 inclusive
2. Name of owner Arthur Bibo
(Indicate whether Corporation, Partnership, Individual)
3. Interest of applicant Owner
(Owner or Lessee—if other, specify)
4. Description of mining property: (If more space is required use blank space below.)

- a. Mining district Mt. Taylor or Haystack Mining District.
- b. Size of property 320 Acres
- c. Number and names of claims included in this property Twenty in the SE $\frac{1}{4}$ & S $\frac{1}{2}$ N $\frac{1}{2}$ of Sec. 13; Twp. 13 North; Rge. II West NMPM. McKinley County, New Mex.
- d. Property is of public record as follows:

DATE OF RECORD	COUNTY	STATE	BOOK NO.	PAGE NO.
Nov. 27, 1950	McKinley	New Mexico	Bk. M-10	256-263
Apr. 3, 1951	"	"	Bk. MCR-3	137
Apr. 20, 1951	"	"	Bk. QCD-6	378
Apr. 20, 1951	"	"	Bk. QCD-6	377
Dec. 5, 1951	"	"	Bk. Lease-7	74 & 78
May 11, 1951	"	"	Bk. MCR-3	251
Mar. 6, 1952	"	"	Bk. M-II	251
May 1, 1952	"	"	Bk. MCR-4	24-34
June 13, 1952	"	"	Bk. M-10	437
Aug. 3, 1954	"	"	Bk. 9-Lease	231 & 232
Nov. 9, 1956	"	"	Bk. QCD-7	571-572
June 26, 1957	"	"	Bk. MCR-38	563
Sept. 17, 1958	"	"	Bk. MCR-44	544 & 23
Aug. 17, 1959	"	"	Bk. MCR-45	471

- e. Title to property is patented or unpatented? (State which.) Unpatented
- f. Description of location of property for verification by mining branch of Colorado Raw Materials Office, Atomic Energy Commission.
SE $\frac{1}{4}$; S $\frac{1}{2}$ N $\frac{1}{2}$; Sec. 13 in Twp. 13 North; Rge. II West NMPM.
McKinley County, New Mexico.

APPLICATION FOR CERTIFICATION OF MINING PROPERTY—Continued

5. Ore accepted by commission ore-buying stations or qualified uranium mills (or any other uranium ore processing plants) from property between April 9, 1948 and February 28, 1951 inclusive:

ACCEPTED BY	AT	NAME OF PROPERTY IF OTHER THAN PRESENT NAME	NAME OF OPERATOR IF OTHER THAN PRESENT OPERATOR	APPROXIMATE PERIOD		ORE-DRY TONS	POUNDS U ₃ O ₈ CONT.
				FROM MO. YR.	TO MO. YR.		
* Anaconda Mining Co.		Bluewater, New Mex.		Nov. II,	1955	11.049	68.+
* Lucius Pitkin, Inc.		AEC Rec. Station, Grants, NM.		" 19	26, 1956	40.206	128.+
Homestake-N.M. Part.		Grants, N.M.		Aug.	1958	267.392	1347.66
"	"	"	"	"	1959	238.791	1513.26
"	"	"	"	Dec.	1959	564.389	2458.24
* Pounds U ₃ O ₈ estimated as no Liquidations as yet furnished to me.							
All ore mentioned above mined from the SE corner of Claim No. 2							
No ore produced during April 9, 1948 and Feb. 28, 1951							
Total number of pounds U ₃ O ₈							5,515.16

I certify to the best of my knowledge that (1) the statements in this application are true and that (2) the total quantity of uranium oxide as contained in ore accepted by commission ore-buying stations or qualified uranium mills (or any other uranium ore processing plants) from the above described property between April 9, 1948 and February 28, 1951 inclusive, is less than 10,000 pounds.

April 6, 1960
(Date)

Arthur Bibb
(Signature of applicant)

Misrepresentations or false statements in the application may subject the applicant to criminal penalties, under provisions of the United States Code including section 1001 of title 18. Any such offense may also disqualify the offender from receiving bonus payments.

(When completed mail to U. S. Atomic Energy Commission, Colorado Raw Materials Office, P. O. Box 270, Grand Junction, Colo.)

16-67645-2 U. S. GOVERNMENT PRINTING OFFICE

SPACE BELOW FOR USE BY APPLICANT, IF NECESSARY

This will advise you that I made application on or for these claims Nov. 20, 1956. Director of the AEC Mining Div., Grand Junction, Colo. Mr. David D. Baker, advised me in his letter of Dec. 6, 1956 (Ref. OAGC:JX) of my right to reapply pending final determination of the validity of these claims. That final determination has not yet been reached and as I am firmly convinced of the legality of these claims, I herewith reapply.

Arthur Bibb

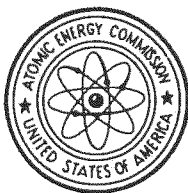
Fe'uray.

Bubo 224.994 T 638.98[#]

to Homelake - New Mexico

Partners Dig. No 312-1

RMJ



UNITED STATES
ATOMIC ENERGY COMMISSION

GRAND JUNCTION OPERATIONS OFFICE

GRAND JUNCTION, COLORADO

IN REPLY REFER TO:

March 17, 1960

Mr. Arthur Bibo
2718 Morrow Road, N.E.
Albuquerque, New Mexico

Dear Mr. Bibo:

Enclosed is our invoice in the amount of \$19,265.13 which is due the Commission for certain uranium-bearing ores identified therein which were mined by you from the SE $\frac{1}{4}$ of section 13, T. 13 N., R. 11 W., NMPN, New Mexico.

This land, among others, was withdrawn and reserved for the use of the Commission by Public Land Order 964 of May 13, 1954 (19 F.R. 2899). You have designated the ores as having come from the Haystack No. 2 unpatented mining claim which was staked on this land. However, this claim, among others, was declared null and void, ab initio, by decision dated November 21, 1956, of the Manager, Land Office, Bureau of Land Management, Santa Fe, New Mexico, in Contest #30 (New Mexico). This decision of the Land Office Manager was affirmed by the Director, Bureau of Land Management, and was approved by the Assistant Secretary of the Interior on November 17, 1958.

We understand that you have not filed suit against the Secretary of the Interior in this case in the United States District Court for the District of Columbia. Consequently, we must consider the Interior Department decision as final and effective.

It is therefore requested that you make payment to the Commission for this amount within thirty (30) days after your receipt of this letter.

In view of the foregoing you are also directed to cease mining operations on this land and to vacate the premises forthwith.

Very truly yours,

Allan E. Jones
Manager

Enclosure:
Invoice (2)

CERTIFIED MAIL — # 975165
RETURN RECEIPT REQUESTED

cc: PLD ✓
FD
Grants

Arthur Bibo
2718 Morrow Rd., NE
Albuquerque, New Mexico.



VIA AIR MAIL
CORREO AEREO

CERTIFIED
No. 752506
MAIL
RETURN RECEIPT REQUESTED

Mr. David D. Baker, Director
Mining Division
United States Atomic Energy Commission
Grand Junction Operations Office
Grand Junction, Colorado.

PAR 
01701

Form AEC-399
(Form approved by Comptroller
General, U. S., Aug. 22, 1956)

No. 60-19

INVOICE FOR SERVICES AND MATERIALS

UNITED STATES ATOMIC ENERGY COMMISSION

Grand Junction Operations Office

(Office)

Grand Junction, Colorado

To: **Mr. Arthur Ribo**
2718 Morrow Road N. E.
Albuquerque, New Mexico

Date: **March 17, 1960**

F. O. B.:

Terms: **Net 30 Days**

ACCESS PERMIT NO.

LICENSE NO.

PURCHASE ORDER

QUANTITY		DESCRIPTION OF SERVICES AND MATERIALS	UNIT PRICE	AMOUNT
ORDERED	SHIPPED			
		For ore mined in trespass from Sec. 13, T13N, R11W, N28E from the invalid mining claim known as Haystack No. 2.		
		Liquidation No. 40 Homestake-New Mexico Partners for 267.392 dry tons of ore.		\$ 5,843.33
		Liquidation No. 217 Homestake-New Mexico Partners for 288.791 dry tons of ore.		\$ 6,588.15
		Liquidation No. 278-1 Homestake-New Mexico Partners for 564.389 dry tons of ore.		<u>\$10,464.84</u>
		Gross Value of Ore		\$22,896.32
		Credits:		
		Mining cost allowances		
		267.392 dry tons Liquidation No. 40 Homestake-New Mexico Partners		
		40.206 dry tons Liquidation No. 2425 Lucius Pitkin, Inc.		
		<u>11.049 dry tons Liquidation No. 1072</u>		
		318.647 dry tons @8.00 per ton	\$2,949.18	
		Haulage allowance Liquidation No. 1072	7.38	
		" " " " No. 2425	44.91	
		" " " " No. 40	244.12	
		" " " " No. 217	266.73	
		" " " " No. 278-1	<u>518.87</u>	
		Total haulage allowance	\$1,082.01	
		Less Total Credits	\$3,631.19	\$ 3,631.19
		AMOUNT DUE		<u>\$19,265.13</u>

MAKE CHECK PAYABLE TO U. S. ATOMIC ENERGY COMMISSION AND MAIL TO ABOVE ADDRESS

16-73048-1 GPO

David D. Baker, Director
Production Evaluation Division, GJ

December 21, 1959

R. H. Toole, Chief
Leasing & Development Branch, PED, GJ

TRESPASS - ARTHUR BIBO

SYMBOL: PLD:RHT

Mr. Ingles Gay of the Grants Branch office PED informed me orally on December 10, 1959 that Mr. Bibo is continuing his mining operations in the SE $\frac{1}{4}$ of Sec. 13, T13N, R11W, N.M.P.M., McKinley County, New Mexico. Mr. Gay estimates that more than 500 tons of uranium ore were stockpiled. Shipment of this ore awaits build up to a lot of 1000 tons and it is reported that arrangement has already been made for acceptance of such a lot at one of the mills in which Homestake is a partner.

By our letter dated October 23, 1959, all of the ore buyers who might be offered the ore mined by Mr. Bibo were notified that the Commission has title to any ore mined from the S $\frac{1}{2}$ N $\frac{1}{2}$ and the SE $\frac{1}{4}$ of Sec. 13, T13N, R11W. Homestake-New Mexico Partners and Homestake-Sapin Partners were among those receiving such notification. Therefore, should those plants accept the ore mined in trespass by Mr. Bibo they will do so with knowledge of the Commission's position in this matter.

Prior to final decision by the Secretary of Interior as to validity of mining claims on these lands, Mr. Bibo produced and delivered 318,647 tons of ore; of this 267,392 tons were sold to Homestake-New Mexico Partners, and 51,255 tons were delivered to government buying stations. We understand that the money for payment of ore delivered to Homestake-New Mexico Partners is being held in escrow. No payment has been made Mr. Bibo on the ore received at the government stations. Our calculations show that Mr. Bibo owes \$2997.74 to the government as a result of these transactions, if we allow him cost of mining and a haulage allowance.

Because Mr. Bibo wishes to bring the matter of the validity of his claims into the local courts we have not as yet sent him a bill for the money due the government nor have we taken action to prevent

David D. Baker

-2-

December 21, 1959

him from further mining. Delay of these matters has been in accord with oral advice of our Office of Counsel. However, in view of the mining activity now being conducted by Mr. Bibb, the Leasing & Development Branch must point out that action to prevent further trespass mining by Mr. Bibb must be taken to protect the governments right and property.

Therefore, we request permission to bill Mr. Bibb for the money due the government and we recommend that legal steps be taken to restrain Mr. Bibb from further trespass.

cc: Office of Counsel

A copy of this letter was also sent the following:
 The Anaconda Company, Box 638, Grants, N. Mex.
 Homestake-Mexico Partners, Box 98, Grants, N. Mex.
 Kermac-Nuclear Fuels Corp., Box 218, Grants, N. Mex.
 Homestake-Sapin Partners, Box 98, Grants, N. Mex.
 Kerr-McGee Oil Ind., Inc., Box 608, Shiprock, N. Mex.

PLD:RRT

October 23, 1959

Phillips Petroleum Company
 P. O. Box 36
 Grants, New Mexico

Gentlemen:

This is to notify you of the status of the lands in the S $\frac{1}{2}$ N $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 13, T. 13 N., R. 11 W., NMPM, where Mr. Arthur Bibb has conducted mining operations on a group of twenty claims called Haystack No. 1 to No. 20, inclusive. We understand that Mr. Bibb has again resumed mining activity in this area.

The S $\frac{1}{2}$ N $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 13, T. 13 N., R. 11 W., NMPM, New Mexico is withdrawn for the use of the Atomic Energy Commission through Public Land Order 964. The Haystack No. 1 through 20 unpatented mining claims located thereon have been declared null and void by a decision of the Department of the Interior in Mineral Contest No. 30, etc. (New Mexico). This decision has been affirmed by the Director of the Bureau of Land Management and was approved by the Secretary of the Interior on November 17, 1958. We understand that Mr. Bibb did not appeal this decision to the Federal Court; consequently, it is final and effective.

In view of this decision of the Department of Interior, and in the absence of an effective appeal to the Federal Court, it must be concluded that mining rights were not established by the location of the Haystack claims and that any ores mined and removed by Mr. Bibb, or others, from that area are the property of the U. S. Atomic Energy Commission and should such ores be delivered to you, the title thereto would remain in the Atomic Energy Commission.

Very truly yours,

R. H. Toole, Chief
 Leasing & Development Branch
 Production Evaluation Division

cc: Mr. Arthur Bibb, 2718 Morrow Rd., NE, Albuquerque, N. Mex.
 Grants Branch, PED

CERTIFIED MAIL - Return Receipt Requested

PED	PED	O. C.
Toole:rc	Baker	

10/23/59

PMS 7/2

July 23, 1959

GC:JEC

Mr. Langan Swent, Manager
Honestake-Sapin Partners
P. O. Box 98
Grants, New Mexico

Dear Mr. Swent:

This is to confirm the notice given to Mr. Howell and Mr. Jones at the mill yesterday by Mr. G. C. Ritter, Chief, Ore Procurement Branch, Grand Junction Operations Office, Atomic Energy Commission, that the $S\frac{1}{2}$ and $SE\frac{1}{4}$ of Section 13, T. 13 N., R. 11 W., NMPN, New Mexico, is withdrawn for the use of the Atomic Energy Commission through PLO 964, and that the Haystack Nos. 1 through 20 unpatented mining claims located thereon have been declared null and void by the Interior Department. A copy of this decision of the Interior Department and a copy of the initial decision of the Bureau of Land Management is enclosed.

Notwithstanding these decisions, Mr. Arthur Bibb has recently advised us of his intention to resume mining operations on the Haystack No. 2 unpatented mining claim. In view of this decision of the Department of Interior, it must be concluded that Mr. Bibb lacks mining rights as to the lands embraced within the Haystack claims, that any ores mined and removed by him from such area are the property of the Atomic Energy Commission, and that should Mr. Bibb deliver any of these ores to you, the title thereto would remain in the Atomic Energy Commission.

Very truly yours,

R. H. Toole
Chief, Leasing and Development Branch
Production Evaluation Division

Enclosures: 2

cc: RHToole ✓
E. W. Grutt, Chief, Grants Branch
G.C.Ritter

STANDARD FORM NO. 64

*See Cert D-238**RHT***Office Memorandum • UNITED STATES GOVERNMENT**

TO : David D. Baker, Director
Production Evaluation Division

DATE: June 18, 1959

FROM : Paul B. Martin, Chief Counsel *PM*
Grand Junction Operations Office

SUBJECT: TRESPASS - ARTHUR BIBO

Symbol: OC:JXC

This memorandum is written in response to the informal request of R. H. Toole, Chief of your Leasing & Development Branch, that he be advised as to the measure of damages to be used by him in calculating the amount due the Commission for the trespass committed by Mr. Arthur Bibo in mining uranium-bearing ores from lands withdrawn and reserved for the use of the Commission in the State of New Mexico.

A chronological sequence of events as to this problem is attached hereto as Appendix "A".

It is my opinion, for reasons hereinafter set forth, that Mr. Bibo's trespass falls within the category of an "innocent" trespass rather than a "willful" trespass, and that the measure of damages should be the value of the minerals in place determined as hereinafter outlined.

In my memorandum of March 20, 1952, to Frank H. MacPherson, Manager CRMO, (copy attached for convenient reference) I pointed out that the measure of damages to be applied in cases such as this is "the measure of damages prescribed by the laws of the state in which the trespass is committed"; I also recommended that as the Commission's mining leases generally provide for a 15% royalty, and as the cost per ton for the initial production is greater than the average cost per ton for the whole operation, that 15% of the amount received by the "innocent" trespasser for the sale of the ore would give a reasonable approximation of the value of the ore in place.

As to the determination as to whether or not the trespass is "innocent" or "willful" the Supreme Court of the United States has stated that an "innocent" trespasser is one who has acted 'in good faith' and that a "willful" trespasser is one who has acted in 'bad faith' and further that "the 'good faith' contemplated by these rules is something more than the trespasser's assertion of a colorable claim to the converted minerals" (United States v Wyoming 331 US 440, 91 L.ed. 1590). In the case of United States v Homestake Mining Company (C.C.A. 8th, 117 Fed.481) which involved the cutting of timber by Homestake on lands

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belonging to the United States subsequent to their withdrawal from such taking, the United States Circuit Court stated that "The question, then is, did the trespasser violate the law, which he constructively knew, recklessly, or with an actual intent to do so, and to take an unconscientious advantage of his victim, or did he violate it inadvertently, unintentionally, or in the honest belief that he was exercising his own right? If the former, he was a willful trespasser, and the value of the manufactured timber or the extracted ore measures his liability. If the latter, he was an innocent trespasser, and the value of the wood in the tree or of the ore in the mine is the limit of his indebtedness. The test to determine whether one was a willful or an innocent trespasser is not his violation of the law in the light of the maxim that every man knows the law, but his honest belief, and his actual intention at the time he committed the trespass; and neither a justification of the acts nor any other complete defense to them is essential to the proof that he who committed them was not a willful trespasser." The Court further stated that "One who acts in good faith upon the erroneous advice of reputable counsel upon questions of legal right concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with a willful intent to commit a wrongful act because his counsel was mistaken in his view of the law." In Mason v United States (260 US 545, 67 L.ed. 396), in which case the United States brought suit against certain locators under the mining laws who had located their claims on withdrawn lands subsequent to their withdrawal, and which is cited in my above mentioned memorandum of March 20, 1952, the United States Supreme Court stated that "The defendants here, it is true, took possession of the lands in violation of the withdrawal order, but they did so in the honest though mistaken belief that the order was wholly without authority. Some of them had legal advice from competent counsel to that effect. It is common knowledge that the validity of the withdrawal order in question, as well as the later order of 1909, was in grave doubt until the decision of this court in United States v. Midwest Oil Co. supra. Not only was a substantial opinion to be found among members of the profession that the order was invalid, but the decision here was by a divided court. In view of these circumstances, we think it fair to conclude that the mining locations by defendants, and the occupation and use of the lands thereunder, were in moral good faith, within the meaning of the Louisiana Code and decisions."

The record of ore shipments as listed in Appendix "A" hereto shows that approximately eleven (11) tons were mined by Mr. Arthur Bibb prior to issuance by the BLM on February 16, 1956 of Notice of Contest New Mexico No. 30, forty (40) tons were delivered within a week after the decision of the Manager of the Santa Fe Land Office of the Bureau of Land Management, and an additional 267 tons were mined while the Manager's decision was on appeal to the Director of the BLM. There is no record of any

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mining after the decision of November 17, 1958 of the Director, BLM. As to the question of the effect of notice of an adverse claim the courts have held that constructive knowledge of the owners title does not demonstrate defendant's bad faith as a matter of law (United States v Wyoming, supra) and that actual knowledge of an adverse claim of the true owner is not inconsistent with good faith on the part of the trespasser. (21 ALR2d 380, at page 396). There is no uniformity of judicial opinion as to the effect of an appeal upon the question of good faith or wilfulness. Some courts, including the Supreme Court of the United States, hold that one who is admittedly in possession of land in good faith was not converted into a willful trespasser by an appeal from an adverse judgment and his continuing production pending such appeal (21 ALR2d 380, at 397); any doubt would appear to be dispelled by the rules of practice of the Department of Interior which provide in 43 CFR 221.101 that "Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately." No such provisions were made by the Director of the Bureau of Land Management; consequently at the time of shipment of the 40 and 267 tons of ore these rules of practice suspended the effect of the decision of the land office manager; the 11 tons were mined prior to the notice of contest.

Mr. Bibb acted on advice of counsel as evidenced by the lengthy brief they filed with the BLM (a copy is in OC files), and based on several meetings here in Grand Junction with Mr. Bibb, both before and after initiation of the BLM contest, it seems clear that Mr. Bibb removed the ore from these lands in the honest belief that the 1939 withdrawal was void and beyond the authority of the Secretary of Interior and consequently that his mining claims were valid; the conclusion based on the foregoing facts and rules of law is that Mr. Bibb's trespass was "innocent" rather than "willful".

As to the question of measure of damages, there are two primary rules sometimes referred to as the "mild" rule and the "harsh" rule; the character of the trespass, i.e. whether "willful" or "innocent", determines which rule is to be applied. The "mild" rule is applied where the trespass is inadvertent or not willful or not in bad faith, and fixes the damages as the value of the minerals in place. Where such value can be ascertained, the question of allowance or disallowance of credit to the trespasser for his expenditures in producing the minerals is not reached. Where evidence of value in place cannot be

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obtained, two methods are used to establish the equivalent of such value: (1) the royalty method, whereby the injured party is allowed the amount for which the privilege of mining and removing the minerals under the customary lease or conveyance of the mineral rights could be sold, and (2) the value of the minerals after extraction less the production costs. Some courts have stated the rule to be that an "innocent" trespasser who has acted in "good faith" is liable to the owner for the full value of the minerals removed, computed as of the time the trespasser converted them to his own use, by sale or otherwise, less the expenses of extraction. In a few cases involving the removal of solid minerals by a nonwilful trespasser, the courts have applied an "intermediate" rule, fixing the measure of damages as market value less production costs. Where the royalty method is employed, the question of the allowance or disallowance of production costs again is not reached. Thus, it is readily seen that the allowance of production costs as a credit against the trespasser's liability for the value of the extracted mineral is actually but a method of arriving at value in place, the primary measure of damages for a nonwilful trespass and removal of minerals. The practical effect of allowing value in place, on the basis of acreage value, or its equivalent determined by the royalty method, is to give the nonwilful trespasser not only credit for the expense of extracting the minerals but also the profits resulting from the conversion; while the owner or possessor of the land may be thus fully compensated, he is deprived of the profits, while the trespasser is thus allowed to profit from his wrongdoing. It was with the thought of not allowing the trespasser any profits that I stated in my previously mentioned memorandum of March 20, 1952, that as the cost per ton for the initial production is greater than the average cost per ton for the whole operation the royalty method could be used; however, it should not be used in any case in which reasonable production costs are available.

As stated above, in accordance with the decision of the Supreme Court of the United States, the rule to be followed is the one prescribed by State law. However, New Mexico has no statutory provisions concerning the measure of damages in trespass cases. The Supreme Court of the State of New Mexico in the case of Alvarado Min. and Mill. Co. v. Warnock (187 Pac. 542) follows the general rule with respect to a willful trespass and indicates (obiter dicta) that in the case of an innocent trespass it would follow the rule of the value of the ore in place. The BLM regulations provide that in a state in which there is no state law governing such trespass, the measure of damages is the value of the ore in place. Thus, it would appear that this rule of the BLM follows the indication of what the rule in New Mexico would be if ruled upon by its Supreme Court.

Accordingly in determining the amount of damages Mr. Toole should determine the value of the ore in place under any of the methods outlined above.

cc: Finance Division